

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WARREN

EVELYN O'BRIEN, JAMIE LYNN PATCHETT, CHRIS FORTNER,
MICHAEL PETTA, JESSICA TAYLOR-MACKRODT, and HEATHER
MARTIN on behalf of themselves and others similarly
situated,

Plaintiffs,

-against-

Index 65232/2018

SAGBOLT, LLC, OCEAN PROPERTIES, LTD, PORTSMOUTH CORPORATE
FINANCIAL SERVICES, INC., PATRICK WALSH, and THOMAS GUAY,

Defendants.

HELD VIRTUALLY VIA MICROSOFT TEAMS

January 20, 2023

FAIRNESS HEARING

B E F O R E:

HON. MARTIN D. AUFFREDOU
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

THE LAW OFFICE OF ANANDA CHAUDHURI
BY: ANANDA N. CHAUDHURI, ESQ.

FLEISCHMAN, BONNER & ROCCO, LLP
BY: KEITH FLEISCHMAN, ESQ.
TYLER VAN PUT, ESQ.

THE LAW OFFICE OF JOSEPH T. MOEN
BY: JOSEPH T. MOEN, ESQ.

1 A P P E A R A N C E S: (Continued)

2 FOR THE DEFENDANTS:

3 GREENBERG, TRAURIG, LLP
4 BY: CATHERINE H. MOLLOY, ESQ.
MICHAEL SLOCUM, ESQ.

5
6 ALSO PRESENT: Sheila Kent, Court Clerk

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8 LISA A. STADTLANDER
Official Senior Reporter

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THE COURT: Let's get started. We're on the record. Good, afternoon everyone. It's very nice to see all of you again. It's been awhile. This has been a lengthy proceeding, and the attorneys have worked very hard to reach a well-negotiated settlement, which today is the subject of a -- just go off the record for a second, Lisa.

(Whereupon, an off-the-record discussion was held.)

THE COURT: -- which today is the subject of a Final Fairness Hearing. There is also returnable today a motion for plaintiffs' -- S apostrophe -- unopposed motion for final approval of class action settlement for an award of attorneys' fees and costs and for incentive awards to the Class representatives, and again, a Final Fairness Hearing scheduled for today at this time by Teams on the class action settlement.

Let start with appearances. Attorney Chaudhuri, let's start with you.

MR. CHAUDHURI: Yes. Ananda Chaudhuri, for plaintiffs in this action, and I'm with the Law Office of Ananda Chaudhuri.

THE COURT: Thank you, counsel.

MR. VAN PUT: This is Tyler Van Put, from
Fleischman, Bonner and Rocco, PLLC, also representing
the plaintiffs as Class counsel.

THE COURT: Thank you, counsel.
Attorney Moen.

MR. MOEN: This is Joe Moen, from the Law
Office of Joseph T. Moen, representing the
plaintiffs.

THE COURT: Thank you, counsel.
Attorney Molloy.

MS. MOLLOY: Good afternoon, your Honor.
Attorney Catie Molloy, on behalf of the defendants,
and also with me -- I'm sure you'll have him
introduce himself -- is Mike Slocum, and we're with
Greenberg, Traurig.

THE COURT: Attorney Slocum?

MR. SLOCUM: Michael Slocum, Greenberg,
Traurig, appearing with Miss Molloy, for defendants.

THE COURT: Thank you, counsel. I will note
that Attorney Fleischman also represents plaintiffs
in this class action. He has attempted to join us,
he's been unable to do so so far, but he advised
Attorney Van Put to begin this afternoon's
proceedings without him. Hopefully he'll be able to

1 join us. Someone continues to try to join here at a
2 266 number. I'm not sure who that is waiting in
3 lobby. Let's try and see who this is. Attorney
4 Fleischman? Attorney Fleischman?

5 MR. FLEISCHMAN: Yes, I am here. Attorneys,
6 can you hear me? More importantly, can everyone else
7 hear me?

8 THE COURT: The answer is yes. Okay.

9 MR. FLEISCHMAN: Yes, your Honor, I'm here.
10 I'll be attending by audio.

11 THE COURT: And you represent plaintiffs?

12 MR. FLEISCHMAN: Correct, your Honor.

13 THE COURT: All right. Very good. Thank you.

14 Two things. One, if we're not speaking,
15 let's turn off our mics; two, when we are speaking,
16 let's introduce ourselves.

17 Okay. So I think what I'd like to do, unless
18 plaintiffs' counsel tell me different, let's turn to
19 Attorney Chaudhuri, and we'll begin with Attorney
20 Chaudhuri and go from there.

21 Attorney Chaudhuri.

22 MR. CHAUDHURI: Yes, your Honor. This is
23 Attorney Chaudhuri. So first I would just like to
24 address the claims process, which was extraordinarily
25 successful in this case and shows widespread support

1 for the class action. So defendants' counsel provided
2 us with a list of class members, wait staff who
3 worked at the Sagamore during the relevant time
4 period. There were 793 members. Our claims
5 administrator Arden attempted to reach out to them,
6 and where letters were returned, they performed
7 skiptracing and was able to identify many of those
8 whose addresses had since changed. At the end of the
9 day, 764 out of 793 class members were located and
10 successfully received notice of this class action.
11 That's a 96% -- that's 96% of the class.

12 I believe our papers erroneously at one point
13 said 76%, but it is 96%. So our claims administrator
14 did a great job in finding these class members.

15 Of those, there were zero objections to the
16 settlement and two potential class members opted out,
17 and so that represents --

18 THE COURT: If you could go back to where you
19 said two potential class members opted out and start
20 again from there. Thank you.

21 MR. CHAUDHURI: Two potential class members
22 opted out. That demonstrates almost 96% of the class
23 members received notice and chose to participate in
24 the class action.

25 So, you know, for the settlement and, you

1 know, the notice which set forth the requested
2 attorneys' fees, administrative fees, the dollar
3 amount of the settlement, there was wide support
4 among class members for that.

5 Also part of the motion is we're requesting a
6 service fee of \$10,000 for each of the named
7 plaintiffs. And we cited case law in our brief that
8 shows that that is a reasonable amount and has been
9 awarded in prior actions.

10 And I just want to say these plaintiffs,
11 these named plaintiffs spent a lot of time
12 participating in this case. Plaintiff O'Brien was
13 deposed three time, Plaintiff Faulkner was deposed
14 two times. The other plaintiffs were deposed one
15 time each. They provided documents and were very
16 responsive to the attorneys' questions and really
17 helped us put together this case.

18 It's also important to recognize that it is
19 not an easy thing for a potential plaintiff to set
20 forth and put their name on the Complaint,
21 especially, you know, in a small community where
22 you're dealing with a large employer like Sagamore.
23 So they did -- they were very involved in doing that,
24 and so for those reasons the \$10,000 attorneys' fee
25 is I think warranted in this case.

1 We're seeking \$12,000 in administrative fees,
2 and that is customary. Again, we cited case law
3 where -- or other cases where administrators received
4 some more fees, and in our experience as attorneys,
5 Arden did a great job in identifying class members,
6 and we believe those fees are reasonable.

7 We are also seeking \$399,999 in attorneys'
8 fees. We liken it to a percentage method of
9 calculating attorneys' fees, and here with the 1.2
10 million settlement, that is one-third of the
11 settlement and that is customary.

12 New York courts also use the lodestar method
13 to crosscheck whether the percentage method is
14 reasonable, and in this case the three firms combined
15 have billed 1,636.9 hours, and with the fees set
16 forth in customary bills by the attorneys, with the
17 fees set forth in Mr. Fleischman's affirmation that
18 is a negative lodestar of .5. You know, you'll see
19 courts sometimes will award two times the lodestar,
20 three times lodestar, you know, and we have a
21 negative lodestar here.

22 Also in the papers we did calculate a blended
23 average hourly rate of \$244.30, and you know, that
24 is, you know, it's a blended average of \$244.30, and
25 that is below what other courts have approved in

1 similar class actions as a reasonable hourly rate for
2 even less experienced attorneys here. So for those
3 reasons we request that our motion be approved in its
4 entirety and the settlement represents a fair,
5 hard-fought negotiation that has benefited the class.

6 THE COURT: Counsel Chaudhuri, I should have
7 asked you before you began whether or not you
8 anticipated any of the named plaintiffs to appear in
9 person. We did offer to conduct a hybrid proceeding
10 today in the courtroom and by Teams, and I failed to
11 ask you that. I had a note to do that and I just
12 overlooked it. I haven't heard that any of the named
13 party plaintiffs are in the courthouse, but if you
14 were anticipating them to be here, we should make
15 arrangements for them to be included.

16 MR. CHAUDHURI: We do not anticipate them to
17 be here. So they have -- they're aware of the
18 hearing today and they have requested that counsel
19 handle it.

20 THE COURT: Thanks, counsel.

21 Same question for Attorneys Molloy and
22 Slocum, did you anticipate any of the defendants'
23 representatives being present in person today to
24 participate in a hybrid fashion?

25 MS. MOLLOY: Your Honor, this is Miss Molloy.

1 We do not anticipate any appearance from the
2 individual or corporate defendants.

3 THE COURT: Thank you, counsel.

4 Attorney Chaudhuri, I will return to you as
5 appropriate, are there any other plaintiffs'
6 attorneys who would would like to be heard with
7 respect to the hearing, with respect to the motion
8 for final order at this time? And that includes you,
9 Attorney Fleischman.

10 MR. FLEISCHMAN: Thank you, your Honor. This
11 is Keith Fleischman. If you can all hear me, I have
12 a couple of brief comments. Mr. Chaudhuri has touched
13 on them, but I think it's important to echo those
14 comments and illuminate them a little bit.

15 In connection with the settlement itself and
16 the fairness of it, and obviously this Court has to
17 judge as to whether the settlement is fair,
18 reasonable and adequate, as the Court is the well
19 aware because this court was adjudicating, there were
20 numerous, numerous disputes in this case. It was a
21 very, very hard-fought litigation. The lawyers on
22 behalf of the Class and, you know, as Mr. Chaudhuri
23 mentioned, one plaintiff was deposed three times, no
24 stone was left unturned in connection with the
25 investigation of this Class, and quite frankly,

1 defendants were very, very worthy advocates and it
2 was a very-hard fought litigation. I think that
3 there came a time, they're doing many litigations,
4 that both sides realized there was tremendous risk,
5 and that the appropriate thing was to really try to
6 hammer out a settlement, if one could be done.

7 And I'll note for the Court, the Court may
8 well be aware of it, that there were times, in fact,
9 when negotiations started, they started on several
10 instances and went nowhere. And even the negotiation
11 at the end of the case between Miss Molloy and myself
12 was -- it was a negotiation in good faith, it was
13 arm's length, but it was very, very hard fought as
14 well.

15 So the result of this case, and as Ananda
16 mentioned, when you have a negative multiplier, you
17 have no objections at all, you have just two
18 opt-outs, you have 96% of the class that is
19 participating in the settlement, being probably one
20 of the more senior people on this call and having
21 spent years and years in class actions prior to other
22 things, this is -- it's an unusual settlement in a
23 lot of ways. Not just the lodestar check, but also
24 the fact that you have no objections and you have
25 this tremendous participation and the result itself,

1 that there will be meaningful recovery for the Class
2 members who participate.

3 So I think that -- I just wanted to put that
4 on the record as part of the record that there is --
5 and it's in our papers as well -- there are numerous
6 reasons why this settlement is fair, reasonable and
7 adequate and should be approved by the Court. Thank
8 you, your Honor.

9 THE COURT: Thank you, counsel.

10 Any other plaintiffs' attorneys wish to be
11 heard at this time?

12 MR. VAN PUT: Yes, your Honor. This is
13 Attorney Van Put. I just want to reiterate some
14 points that Attorney Chaudhuri made about the Class
15 reception to this settlement. And as Mr. Chaudhuri
16 pointed out, there have only been two opt-outs out of
17 the 764 class members who received notification and
18 there have been no objections either to the
19 settlement or to the fees that we're requesting
20 today, the service fees, the attorneys' fees or the
21 claims administration fees.

22 In addition to that, I just want to alert the
23 Court that I have fielded some calls from people that
24 received notice that they're members of the Class, as
25 well as Attorney Moen, and in each of those instances

1 the calls we've received were positive calls. You
2 know, the Class members who spoke to me indicated
3 money potentially coming in at what is essentially
4 the tail end hopefully of a global pandemic that
5 really affected the availability and the work that
6 people in the hospitality industry had over the last
7 few years was significant, and any recovery they can
8 get, you know, any amount of money in the settlement
9 would really go a long way, particularly, you know,
10 today at the end of all of this.

11 So in addition to the lack of opt-out or
12 minimum opt-out and lack of objections, we received
13 positive feedback from people that have contacted our
14 offices as well. Thank you.

15 MR. MOEN: Thank you, Judge.

16 THE COURT: Attorney Moen.

17 MR. MOEN: So, yeah, just to reiterate what
18 Tyler said, really positive responses from the Class
19 members who have called to express interest in the
20 settlement, so I think they were very excited to
21 potentially receive some funds.

22 THE COURT: Thank you, counsel.

23 Attorney Chaudhuri, before I turn to
24 defendants' counsel, any further thoughts, comments,
25 input?

1 MR. CHAUDHURI: No, your Honor. Nothing
2 further than what my co-counsel has added. Thank you.

3 THE COURT: Thank you, counsel.

4 Turning to defendants' counsel. Attorney
5 Molloy, Attorney Slocum, your thoughts on this
6 settlement, your thoughts on the fees, on the service
7 awards, et cetera. I have in the papers that there
8 is no opposition, but that doesn't mean that I don't
9 want to hear your comments and any concerns that you
10 have about this settlement and the final numbers or
11 distribution numbers.

12 MS. MOLLOY: Thank you, your Honor. This is
13 Attorney Molloy. As the plaintiffs' counsel has
14 indicated, these were hard-fought disputed claims.
15 The plaintiffs sat for multiple depositions. Each of
16 the defendants still denies any liability and
17 believes it would ultimately be successful in this
18 matter, however, we all agree that this is a fair and
19 reasonable settlement that the parties have agreed to
20 and we have no objection to the service payments or
21 the amount of attorney's fees.

22 THE COURT: Thank you, Counsel.

23 Attorney Slocum.

24 MR. SLOCUM: Thank you, your Honor. No,
25 nothing to add beyond what Ms. Molloy stated. I agree

1 this was a very well-contested dispute on both sides,
2 and the negotiations were definitely arm's length. I
3 believe this is a good settlement.

4 THE COURT: Thank you, counsel.

5 As to the proposed order, Attorney Molloy,
6 Attorney Slocum, I assume you've had an opportunity
7 to review, comment, input, modify, et cetera, the
8 order that's before me that came to me on January 5.
9 Is defense counsel in agreement with the terms of
10 that order, and should this settlement be approved;
11 are you okay with me signing the order as presented?

12 MS. MOLLOY: Yes, your Honor. That was an
13 agreed proposed order, and plaintiffs' counsel ran
14 that by us before submitting and allowed us to make
15 comment and revisions.

16 THE COURT: Thank you, counsel.

17 MS. MOLLOY: This is Attorney Molloy. I
18 apologize, we didn't hear any of that.

19 THE COURT: Yeah, that's because I muted --
20 sorry. Off the record.

21 (Whereupon, an off-the-record discussion was
22 held.)

23 THE COURT: As to the service award, \$10,000
24 each to the named plaintiff, which comes out of the
25 gross amount, Defense -- the defendants are okay with

1 that as a distribution to those named plaintiffs, am
2 I understanding that correctly?

3 MS. MOLLOY: Your Honor, we defer to the
4 plaintiffs and to the claims administrator generally
5 on how the funds and distributions are calculated and
6 disbursed. You know, the plaintiffs have chosen to
7 allocate \$10,000 to each of the named plaintiffs.
8 The service award, we maintain no position on that.
9 We do not object and we leave that to the plaintiffs
10 to determine.

11 THE COURT: And you don't question the
12 legality of that?

13 MS. MOLLOY: Not the legality, no, your
14 Honor.

15 THE COURT: And as to the amount, you're
16 leaving that to the discretion of plaintiffs' counsel
17 and the plaintiffs themselves?

18 MS. MOLLOY: That's correct.

19 THE COURT: Attorney Chaudhuri, anything else
20 for plaintiffs?

21 MR. CHAUDHURI: Nothing from plaintiffs.

22 THE COURT: Any other plaintiffs' counsel,
23 anything to add at this time or to clarify any final
24 concerns? Anything else that you wanted to bring up
25 before but may have overlooked?

1 MR. FLEISCHMAN: Nothing from plaintiffs,
2 your Honor.

3 MR. VAN PUT: Nothing further, your Honor.
4 Thank you.

5 THE COURT: Well, thank you very much.

6 I'll note that the parties were fully
7 represented in today's proceedings, the Fairness
8 Hearing and the Motion For Final Approval as well,
9 and I've had an opportunity to review all of the
10 papers that have been submitted and in very, very
11 more-than-sufficient detailed terms and analysis
12 setting forth the history of this proceeding, how the
13 settlement was arrived at, why the settlement was
14 arrived at and a very detailed affirmation from not
15 only counsel, but memos of law, two memos of law, and
16 also a detailed affirmation from Barry J. Peek of
17 Arden, who was the claims administrator here,
18 explaining the process that his firm engaged in to
19 provide notice to the Class.

20 You know, in looking at this you can't help
21 but be impressed with a 96% deliverable rate. It is
22 as near perfect as you could possibly ask for. Zero
23 objections were received, two potential class members
24 opting out, which has been detailed in the papers and
25 examined here today. I know from my experience with

1 this file, from my experience with these attorneys
2 who have all shown nothing but exceptional skill and
3 talent throughout the course of this proceeding, I
4 know how hard-fought this was and how diligently this
5 settlement was negotiated. I know based upon the
6 reputation and expertise of these attorneys that they
7 would not have arrived at a settlement if all of them
8 did not believe that it was fair and reasonable and
9 adequate.

10 I conclude that it is -- I find no reason not
11 to approve this settlement. It is essentially on
12 consent and which includes all of the -- the gross
13 amount of a million two, it includes the attorneys'
14 fees and costs, which total 420,854.48, the claims
15 administrator of \$12,000, the service award fee of
16 of 60,000, 10,000 for each named plaintiff, which is
17 comprised of that for a net settlement fund resulting
18 in 707,145.52. And I'm getting all of that from the
19 affirmation of Mr. Peek, which is in the record and
20 was included with a motion papers for final approval
21 that were submitted on January 5.

22 I have had an opportunity to review the
23 proposed order. I'm going to grant plaintiffs'
24 motion for final approval of the class action
25 settlement. I'm going to sign the order. I don't

1 anticipate making any changes or additions to that.
2 I've looked at it a number of times in anticipation
3 of today's proceedings. We'll upload the proposed
4 order, and do I understand, Attorney Fleischman, do I
5 understand -- just go back for one second, I'm going
6 back to your motion papers when the preliminary
7 approval was given for the class action settlement,
8 and in those motions papers you indicated you would
9 be making the motion for final approval. You've done
10 so.

11 Counselors, are there any other motions or
12 applications that must be made to the Court, or does
13 this bring this proceeding to its conclusion?

14 MR. FLEISCHMAN: Your Honor, Keith
15 Fleischman. Respectfully, there are no other motions
16 that I'm aware of. These motion papers and ultimately
17 the orders that you've indicated you're going to sign
18 ends this litigation.

19 THE COURT: All are in agreement with that?

20 MR. CHAUDHURI: Yes, your Honor.

21 MR. SLOCUM: Yes, your Honor.

22 THE COURT: Thank you. Counselors who
23 practice class action litigation on a regular basis,
24 are there any particular findings that you would like
25 me to address on the record that I have not already

1 addressed, or is there anything -- well, or is there
2 anything in addition that you would like me to recite
3 for this record before signing the order?

4 MR. FLEISCHMAN: Your Honor, this is Keith
5 Fleischman. I think you've indicated quite clearly
6 that the settlement itself is fair, reasonable and
7 adequate, and you've given your reasons why, which
8 are well-regarded. And then I think you probably want
9 to just on the record make a notation that the fees,
10 in light of the fact that there is a negative
11 multiplier and in light of the 96% take rate of the
12 participants, the Class members, and in light of the
13 fact that over a thousand hours were spent in that,
14 actually plaintiffs' counsel is getting 50% less of
15 what they actually expended in attorney hours, that
16 you find the fee application and the fees and
17 expenses to plaintiffs, as well as the service award
18 to the lead plaintiffs to be reasonable as well.

19 THE COURT: Thank, you, counsel. I do so find
20 that the rationale for the fees is set forth in
21 considerable detail in the motion papers. The fees
22 that are being paid here to counsel, including the
23 administrator fees, including the service awards,
24 based upon the work that's been done, based upon the
25 expertise, based upon their hourly rates, based upon

1 the enormous amount of time that all counsel have
2 invested here, I know of nothing else to say other
3 than these fees and proposed are eminently reasonable
4 and fair and are so approved.

5 MR. FLEISCHMAN: Thank you, your Honor.

6 THE COURT: Thank you.

7 Anyone else have anything else that they
8 would like to say at this juncture?

9 MR. FLEISCHMAN: Nothing from plaintiffs,
10 your Honor. It's been a pleasure litigating before
11 your court, and thank you very much.

12 MR. SLOCUM: On behalf of the defendants,
13 your Honor, we'll echo that sentiment, and we
14 appreciate all that you've done.

15 THE COURT: Well, thank you for those
16 comments, and my thanks to each and every one of you.
17 I know that it's maybe not said as often as it should
18 be -- I'm getting an echo, and I'm not sure why.

19 Attorney Fleischman, could you mute?

20 MR. FLEISCHMAN: I just did, your Honor. I
21 will right now.

22 THE COURT: All right. I think the echo is
23 resolved.

24 It's not said as often as it should, but I
25 want all of you to be mindful of the fact that me

1 sitting here as the judge overseeing this proceeding
2 and watching all of you perform your work and your
3 craft and doing so in such a magnificently,
4 professional manner month after month, year after
5 year, working so hard to get this outcome for your
6 clients, I want you to know that your excellence in
7 the work has not gone unnoticed here. I marveled at
8 it each and every time we've met. Each and every
9 time I've read anything that any of you have produced
10 I've marveled at it. You have served your clients
11 very well here, and all of you have much to be proud
12 of. It's indeed my great honor to be able to work
13 with attorneys of such high caliber, so I thank you
14 for your service.

15 I wish all of you well. I'm glad we were able
16 to bring this to closure. You did it, not me. All
17 of you did it. I'm glad we're able to bring this to
18 closure, and I hope, I sincerely hope I have the
19 opportunity to work again with each and every one of
20 you. And I wish all of you the very best.

21 MR. FLEISCHMAN: Thank you, your Honor.

22 MR. SLOCUM: Thank you, your Honor.

23 MS. MOLLOY: Thank you.

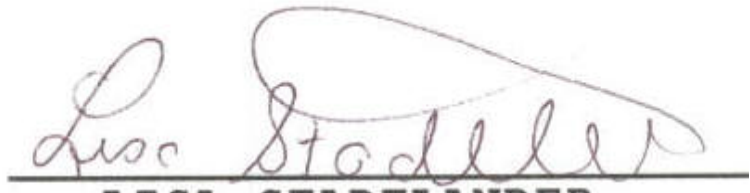
24 THE COURT: Thank you. We will close today's
25 proceeding. All have a good day and good weekend.

1 Take care.

2 (Whereupon, the matter was concluded at 2:15
3 P.M.)

4
5 REPORTER'S CERTIFICATE

6
7 I, LISA STADTLANDER, Court
8 Reporter and Notary Public in and for the State of
9 New York, do hereby certify that I recorded
10 stenographically the foregoing proceedings, taken at
11 the time and place as mentioned, and the preceding is
12 a true and accurate transcript thereof, to the best
13 of my knowledge and belief.

14
A handwritten signature in dark ink, reading "Lisa Stadlander", is written over a solid horizontal line. Below the solid line is a dashed horizontal line.

17
18 LISA STADTLANDER
19 SENIOR COURT REPORTER
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